

March 29, 1955

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CONCORD, N.H.

Honorable Lane Dwinell, Governor
State of New Hampshire
Concord, New Hampshire

Dear Governor Dwinell:

You have inquired whether salary payments for State employees can be legally made on May 27 for a payroll period ending May 31. I respectfully advise in the negative. And further that this advice is confirmatory of a previous opinion rendered to former Governor Hugh Gregg on December 8, 1953, and still another opinion rendered to Mr. Remick Loughton, when Commissioner to perform the duties of the State Treasurer, on March 14, 1951. *see attache March*

Payment of State funds made only on warrants drawn by the Governor with the advice of the Council may be executed only when "... any money is due from the state to any person ...". R.L., c. 27, s. 1. Certain exceptions to this general provision with respect to warrants on a working capital fund are unavailable to change the conclusion reached.

In addition R.L., c. 22, s. 34, further expresses the sense of the Legislature in respect to bills other than salaries provided for by statute that services shall have actually been performed and expenses actually incurred. R.L., c. 22, s. 39, states specifically that "All persons performing work in the service of the state of New Hampshire shall be paid their compensation at such intervals, not more often than weekly, as the comptroller with the approval of the governor and council shall determine."

A resolution by the Governor and Council authorizing payment of salaries prior to the rendition of service and for which the State has received no value and would not be liable would be an unauthorized act, and the payment illegal short of additional enabling legislation. Cf. State v. Kimball, 96 N.H. 377.

Respectfully,

Louis C. Wyman
Attorney General

LCW/aml